

# California Native Plant Society

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May 20, 2019

Mark Slovick, Deputy Director  
Gregory Mattson, Project Manager  
Planning & Development Services  
5510 Overland Avenue, Suite 310,  
San Diego, California 92123  
By email to Gregory.mattson@sdcounty.ca.gov and Mark.Slovick@sdcounty.ca.gov

RE: SEIR for Otay Ranch Village 13 Master Planned Community-Resort Village: PDS2004-3800-04-003; PDS2004-3810-04-002; PDS2004-3600-04-009; PDS2004-3100-5361A & B; LOG NO. PDS2004-04-19005; SCH NO. 2004101058

Dear Mr. Slovick and Mr. Mattson,

We appreciate the opportunity to comment on the Otay Ranch Village 13 Master Planned Community-Resort Village ("Project") draft supplemental Environmental Impact Report ("SEIR") and its link to the original draft Environmental Impact Report ("EIR"). The San Diego Chapter of the California Native Plant Society (CNPS) works to protect California's native plant heritage and preserve it for future generations. CNPS promotes sound plant science as the backbone of effective natural areas protection. We work closely with decision-makers, scientists, and local planners to advocate for well informed and environmentally friendly policies, regulations, and land management practices. Our focus is on California's native plants, the vegetation they form, on keeping both plants and people safe from damaging fires, and on climate change as it affects both.

We are writing to question this project's rationale and to point out flaws in the SEIR, including significant, undocumented impacts to sensitive species both intentionally and through mistakes. In our opinion, the burdens and impacts the proposed Project imposes on the County outweigh its proposed benefits. Therefore we urge the County to not certify the current EIR nor to approve the Project in its current form. While we appreciate the effort that went into creating Alternative H, there are still significant problems and shortcomings we describe below.

In the comments below, questions are marked in **bold face** to make them easier to find and to answer.

## Overall

**One overall problem is that the directions given in the "Recirculation Reader's Guide" appear contradictory. What are we allowed to comment on? Is it (paragraph 3): "Pursuant to CEQA Guidelines Section 15088.5(f)(2), reviewers should limit their comments to the revised chapters or portions of the recirculated EIR only"? Or is it (paragraph 4):**



*Dedicated to the preservation of California native flora*

“Reviewers can provide comments only the portions of the Draft Revised Global Climate Change Section 2.10 and Project Alternatives Chapter 4.0 that have changed”? The latter seems to exclude comments on the Appendices.

CEQA Guidelines Section 15088(f)(2) states “When the EIR is revised only in part and the lead agency is recirculating only the revised chapters or portions of the EIR, the lead agency may request that reviewers limit their comments to the revised chapters or portions of the recirculated EIR. The lead agency need only respond to (i) comments received during the initial circulation period that relate to chapters or portions of the document that were not revised and recirculated, and (ii) comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated.”

RO-2-3 Based on the CEQA Guidelines, it is clear that comments on the appendices are allowable and will be responded to. Given the issues found in those documents, we have chosen that route. As noted below, we wonder **how to interpret appendices that provide new information that contradicts the unchanged chapters in the original EIR? We strongly suggest that the final EIR, which contains the updates from the SEIR, be congruent and without contradiction, such that the analysis supports the findings in all cases. What can be done to achieve this?**

Additionally, it would be good to clarify the role of the analysis of Alternative H in the Appendices. For example, in the Biotech report, some of the EIR mitigations are rewritten. **Are these rewritten mitigations only to be used if Alternative H is approved in place of the Proposed Project, or do they apply to the Project, whatever alternative is approved?** Please clarify this.

### Native Plants

We found a number of issues with the way native plant species were dealt with in the SEIR. The issues are organized into three major groups, as detailed below.

RO-2-4 The first, major issue, is that sensitive species were misidentified, not surveyed for, or not surveyed for in the correct season. For example, there are unmitigated, significant impacts to Nuttall's scrub oak (*Quercus dumosa*), a CDFW list 1B rare plant. Apparently this treatment follows the EIR (p.2.3-20) in assuming that the scrub oaks on the Project site cannot be Nuttall's scrub oak, based on a single literature citation.<sup>1</sup> Due to this question, no mitigation was made for Nuttall's scrub oak in the project, despite the 100% take of scrub oaks described in Appendix D-3.

This identification of the oaks based on the literature is almost certainly in error. The literature on Nuttall's scrub oak has issues, and the idea that it grows "almost always within sight of the ocean" can be readily disproved, as demonstrated in figures 1 and 2 (next two pages page). Figure 1 shows the Nuttall's scrub oak samples in the San Diego Natural History Museum (SDNHM) Plant Atlas<sup>2</sup>, while Figure 2 is a blowup of Figure 1, showing the area around the Project site. **The important thing to note is that the herbarium head, Dr. Jon Rebman, has verified the identity of the oaks in the SDNHM collection, so their record constitutes an accurate range map.**

<sup>1</sup> Fryer, Janet L. 2012. *Quercus berberidifolia*, *Q. dumosa*. In: Fire Effects Information System, [Online]. U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station, Fire Sciences Laboratory (Producer). Available: <http://www.fs.fed.us/database/feis/>

<sup>2</sup> <http://sdplantatlas.org/GMap/GMapSpeciesMap.htm>, accessed 5/19/2019

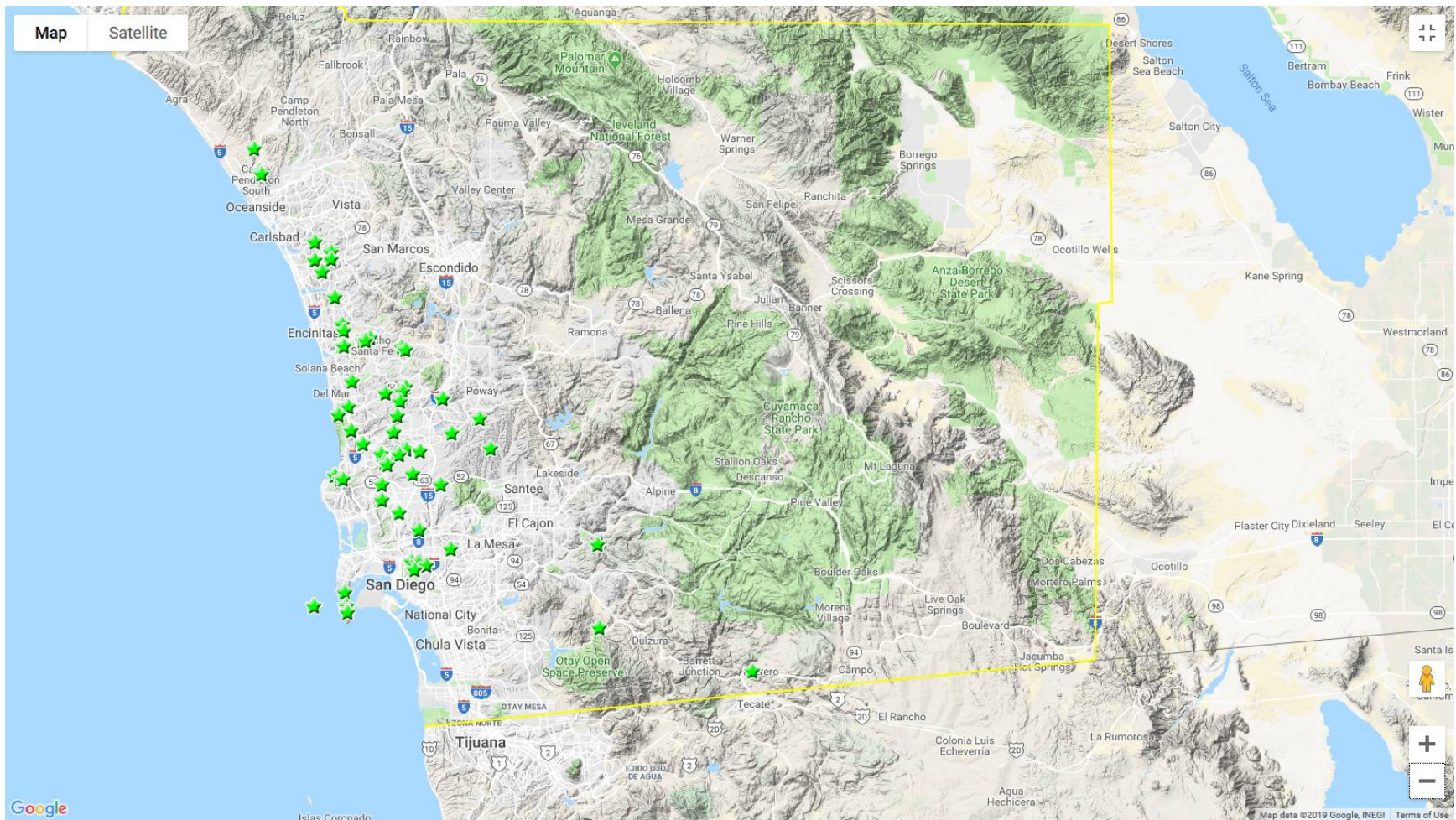


Figure 1. All Nuttall's scrub oak samples recorded in the San Diego Plant Atlas.



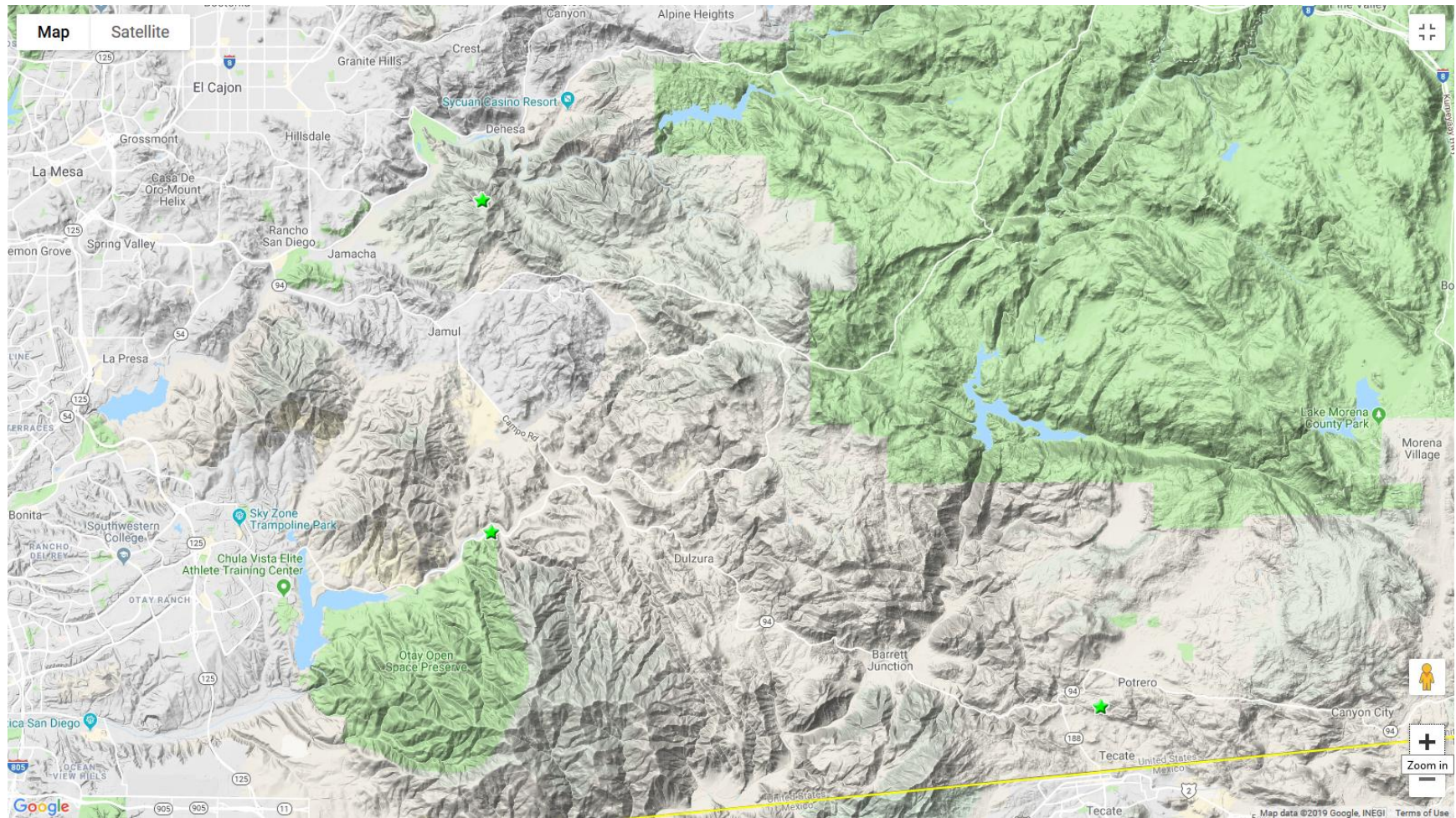


Figure 2. The locations of three Nuttall's scrub oak specimens near the Project site, in the Olay Open Space Preserve lower center, just east of the Project), west of Potrero (lower right) and south of Dehesa and Sycuan Casino (upper center).

RO-2-4  
Continued

Moreover, I verified that two specimens of Nuttall's scrub oak collected east of the site (specimens 79441 and 180320) were, when I examined the specimens at SDNHM, definitely Nuttall's scrub oak. It is a species I am quite familiar with, as I have a PhD in botany, and I see it every week on Del Mar Mesa. That identification was confirmed (as noted on each specimen sheet) for 180320 by Dr. Jon Rebman, head of the herbarium and a leading expert on San Diego's flora, and for 79441 by Dr. Kevin Nixon, the oak expert who created the modern name of *Quercus dumosa*.

Because of the herbarium specimens, we can confidently state that the Project site is within the physically documented range of Nuttall's scrub oak, as the Project site is west of the easternmost documented and confirmed locations for this species in southern San Diego County.

**Why is this species not properly dealt with in the SEIR?**

The proper solution is to send out a qualified botanist with a CDFW sensitive plant collection permit. This botanist must collect specimens of the scrub oaks within the Project, identify them with help from local experts, and deposit the specimens at the SDNHM herbarium so there are publicly available reference specimens in case the question arises again.

RO-2-5

**Based on the available physical evidence, the County must assume that the scrub oaks on the project site are Nuttall's scrub oak until proven otherwise, that the significant impacts to them have not been mitigated, and that these impacts need to be mitigated before the Project can be considered for certification. Following the Draft Otay Ranch Phase 2 Resource Management Plan, we urge the County to mandate preservation of 75% of the Nuttall's scrub oak population in situ. If another goal is chosen, what is the County's reasoning and plan to preserve this population of one of the rarest oaks in California?**

RO-2-6

Additionally, there is a lack of surveys for sensitive bryophytes and lichens, such as Campbell's liverwort (*Geothallus tuberosus*, CRPR List 1B.1) bottle liverwort (*Sphaerocarpos drewei* CRPR List 1B.1), and woven-spored lichen (*Texosporium sancti-jacobi*, CRPR list 3). Species found with them occur in the Project area. As Dudek biologists know, accurate surveys for these species were impossible prior to 2017, due to inaccurate habitat descriptions in the literature that local bryologists are now fixing through focused research. These species do not appear in dry years, so surveys for them would have to take place in the January or February of a wet year, such as 2017 or 2019, soon after rains. **Where such surveys undertaken? If not, why not, given that the SEIR was published in April 2019?**

RO-2-7

Additionally, surveys for little mouselink (*Myosurus minimus*, CRPR List 3) and California adder's tongue (*Ophioglossum californicum*, CRPR List 4) need to be performed in the winter of a wet year to have any hope of success. **How can the SEIR properly claim that the plants do not exist on site, given that the most recent surveys were performed in the spring of drought years when the plants would not be found?**

RO-2-8

There is also an absence of Engelmann oak, singlewhorl burrobush, and Dunn's mariposa from sensitive plant surveys. The SDNHM herbarium contains a specimens of sensitive species on or adjacent to the Project lands that are not included in the Biological Resources Report. **Has any attempt been made to insure they are not on the Project?** Missing sensitive species include:

- Singlewhorl burrobush (*Ambrosia monogyra*, List 2B.2) collected on Otay Lakes Road in 2005.
- Dunn's mariposa (*Calochortus dunnii*, List 1B.2). This species occurs south of the Project on preserve lands, and an unknown *Calochortus* species is listed in the DEIR flora.

RO-2-9

- Engelmann oak (*Quercus engelmannii*, list 4.2) collected in 1940 on the edge of Otay Lakes Road (specimen 28307), on the boundary of the Project. Given that the species is also on the Specific Plan prohibited list of plant species and that impacts to the Nuttall's scrub oak were mishandled, we suggest that the Project Proponents at the very least allow Engelmann oak to be planted on the site again, if it is not still there and somehow misidentified.

RO-2-10

**Ashy spikemoss is impacted without mitigation.** Despite the fact that the presence of ashy spikemoss was noted on page A-1 of the plant list (Appendix A, Vascular Plant Species Observed in the Project Area), somehow it disappeared from the EIR. This mistake must be remedied. **The Otay Ranch RMP Phase 2 mandates 50% preservation of Ashy spikemoss. Habitat preservation and (if necessary) mitigation measures must be created and undertaken to preserve this plant.**

RO-2-11

There is also a lack of up-to-date surveys and surveys in the proper season to find sensitive plants. The most recent plant and vegetation surveys were performed in 2016, and missed the two wet years of 2019. Moreover, the SEIR uses data on annual plant populations from 2000 as if they are current. **CNPSSD urges the County to mandate focused sensitive plant surveys in the proper season before the EIR is certified.**

The second major issue is under-mitigated impacts to Sensitive Plants. As shown in Table 1 (below), the proposed mitigation ratios of some species fall short of what is required by the Otay Ranch Resource Management Plan Phase 2.

Table 1. Shortfall in species preservation as required by the Otay Ranch RMP Phase 2

Species	CDFW Rank/ County List	Percent Preserved in Project*	Percent Preservation required by Otay Ranch RMP Phase 2	Difference
Adolphia ( <i>Adolphia californica</i> )	2B/A	0	75	-75%
San Diego goldenstar ( <i>Bloomeria clevelandii</i> )	1B/A	41%	54	-13%
Western dichondra ( <i>Dichondra occidentalis</i> )	4.2/D	20%	50%	-30%
San Diego barrel cactus ( <i>Ferocactus viridescens</i> )	2.1/B	72%	75%	-3%
San Diego marshelder ( <i>Iva hayesiana</i> )	2.2/B	47	75	-28%
Little mouseltail ( <i>Myosurus minimus</i> spp. <i>apus</i> )	3.1/C	0%	75% if it is extant	-75%
California adder's tongue ( <i>Ophioglossum californicum</i> )	4.2/D	0%	75% if it is extant	-75%
Ashy spikemoss ( <i>Selaginella cinerascens</i> )	4.1/D	0%	50%	-50%

\*This percentage assumes that data collected as far back as 2000 is currently correct. The shortfall may be substantially higher.

RO-2-12



These sensitive species deserve better protection than they get under the existing mitigation. **What additional measures will the County and Project Proponents take to meet the standards of the RMP?**

*Of particular concern is the San Diego golden star, a list 1B plant, San Diego barrel cactus, Munz's sage, a List 2B plant. As with the adolphia (M-BI-8) and the Nuttall's scrub oak, the mitigation plan needs to set forth explicit measures to insure that these rare and sensitive plants are properly mitigated, and not inadvertently left of a landscaping palette or otherwise conveniently ignored.*

A third issue is the lack of specificity in the vernal pool restoration plan. Per Appendix B p. 53, it appears that the vernal pool planting plan and grading plan are to be created by a “registered landscape architect.” **Why not specify a specialist in vernal pool restoration?** Most landscape architects do not have the technical knowledge or experience to create a functioning vernal pool, and this knowledge is vital. Please update the plan to require adequate skill, knowledge, and experience, to maximize the chances of success if pools are to be restored.

## Wildfire

We have a number of questions and comments on the fire protection plan as presented, grouped below into four categories.

**First, does Appendix D-21 properly analyze all the predictable impacts of a wildfire and mitigate for them?** The relevant question on the CEQA checklist is whether the Project would “Expose people or structures [emphasis added] to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?” Therefore, any analysis that asserts that the wildfire impacts are mitigated below the level of significance, because every human in the Project can be evacuated successfully misses the hundreds of millions of dollars in losses sustained if the structures burn down. **Does the EIR or the SEIR adequately analyze impacts to structures? Who is impacted by these losses: the homeowners, insurance companies (there are very few who do fire insurance), the County, State, and US government (loss of tax base, cost of backstopping insurance losses), NGOs like Red Cross? Were any of them consulted about the impacts they will predictably face during and after a wildfire? Was their testimony solicited? Are there unmitigated impacts to them?**

Moreover, Appendix D-21 states (p. 72) states directly that “[f]ire is a dynamic and somewhat unpredictable occurrence and as such, this plan does not guarantee that a fire will not occur or will not result in injury, loss of life or loss of property. There are no warranties, expressed or implied, regarding the suitability or effectiveness of the recommendations and requirements in this plan, under all circumstances.” This analysis does not support, and in fact directly contradicts, the conclusion in the main EIR (p. 2.6-27) that “the proposed Project would *not result in a cumulatively significant impact* related to the risk of wildland fires.” [emphasis in the original] **Which is correct, the 2018 analysis in Appendix D-21, or the 2015 conclusion in the EIR? If the Fire Protection Plan cannot guarantee that the people or structures in the Project will not be exposed to a significant risk of loss, injury, or death involving wildland fires, are there not significant, unmitigated impacts from fires due to this Project?**

**Second, why was the entire fire analysis not redone for the SEIR?** Given the problems uncovered during the disastrous Camp Fire, where 85 people died and 18,000 homes were lost, where phased evacuations did not work due to lack of capacity in the phone system. Given that the San Diego County Board of Supervisors asked on March 12, 2019, asked for staff recommendations on how to “[s]trengthen fire safety measures in new construction, including stricter building requirements in the fire code for homes in high fire areas” and “[i]mprove pre-fire emergency planning. **Given all this, why should the standard for successful mitigation be the 2013 California Fire Code for new development in the wildland-urban interface (WUI), as expressed in the EIR?** The status quo is inadequate and the lead agency is asking for stricter standards. **Why not exceed code and anticipate the requirements for homes likely to be in place if the Project is built? Or better yet, why not wait until the updated requirements are in place before considering this Project?**

**Third, please clarify the relationship between Appendix D 21 and the fire analysis in the EIR. Where the two contradict each other, which one is relevant and which is to be ignored? Is the new Appendix D-21 only to be applied if Alternative H is chosen and ignored otherwise?** An example of why this matters is where Appendix D-21 says “This FPP provides measures for fire protection which meet the 2017 San Diego County Consolidated Fire Code, or meets the intent of the code” while the EIR says (p. 2.6-22) “As described in Section 4.4 of the FPP, the Project would be constructed in compliance with the 2014 County Consolidated Fire Code and 2013 County Building Code, Part 2.5 – 2013 California Residential Code, , and Part 9 – 2013 California Fire Code for new development in the wildland-urban interface (WUI).” Since there are two FPPs prepared several years apart, it is natural that they should disagree. **The question is, which one takes precedence when they do disagree? If the EIR takes precedence, why rely on outdated standards?**

**Fourth, why depend on Ready, Set, Go?** We agree that the fundamental strategy is sound (prepare in advance, maintain situational awareness, and evacuate rather than sheltering in place). However, the County implementation of Ready, Set, Go is problematic in specific ways. For example, it assumes that homeowners will create a single emergency kit for all emergencies (earthquakes, ARkStorms<sup>3</sup>, wildfires). This emergency kit was considered to be the basis for all emergency activities, whether it is sheltering in a home for three days following an earthquake or during a flood, or hauled into a car for a rapid evacuation. While it is decent, if skimpy, for earthquakes, it is problematic for fire evacuation. To see why, let us look at what the County recommends be put into a Ready, Set, Go Kit<sup>4</sup>:

- Water – minimum of 1 gallon per person per day [for four people this is 12 gallons or 108 pounds of water],
- Non-Perishable Foods,
- First Aid Kit and Manual
- Can opener – non-electric
- Watch or clock – non-electric
- Plug-in analog telephone [how is this useful to an evacuee?]

<sup>3</sup> <https://en.wikipedia.org/wiki/ARkStorm>, accessed May 18, 2019

<sup>4</sup> <http://www.readysandiego.org/content/oesready/en-us/BuildaKit.html>, accessed May 18, 2019. A similar list is given in the *Ready, Set, Go* brochure.



- Cash
- Important documents
- Activity items for adults (cards) and kids (coloring books)
- Blankets or sleeping bags for each member of the family
- Radio – portable, with spare batteries
- Prescription and over-the-counter medications\*
- Additional equipment – glasses, dentures, hearing aids
- Flashlight – spare batteries and light bulb
- Fire extinguisher – multipurpose labeled “ABC”
- Whistle
- Dust mask

RO-2-22  
Continued

**Is this really what people should haul into their car when they have to rapidly evacuate their homes? Isn't this a lot of heavy, unnecessary items, like 108 pounds of water or an analog phone that will be useless even if someone finds a phone jack at the emergency shelter? Where are the cell phones that the SDEmergency Apps run on? And their chargers? How about the laptops that contain all the family photos, records, online lives, and business records? Most importantly, what about pets and clothes?** Evacuating rapidly during a wildfire requires fundamentally different preparations than does sheltering for a week after an earthquake. **What would a useful evacuation checklist and set of directions actually look like? How would this system be integrated into County disaster planning? How would it be updated?** These are the questions that should have been answered in this section.

RO-2-23

### Climate Change

It is unclear what the standard for determining the mitigation is as section 2.10 is now written. Per the EIR (p. 2.10-15) “...this EIR does not rely upon or use the CAP or otherwise streamline its environmental analysis based on the CAP. Instead, the EIR uses significance thresholds derived from Appendix G of the CEQA Guidelines, and is informed by CEQA Guidelines Section 15064.4. Notably, CEQA Guidelines Section 15064.4 does not require that the County have an adopted or judicially validated CAP in place in order to analyze, determine, and mitigate the effects of the proposed Project’s GHG emissions.” This raises some concerns.

RO-2-24

First, taking these in reverse order, CEQA Guidelines Appendix G merely asks two questions, whether the Project would : “a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment? b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?” The answer to these two questions is clearly that yes, there are potentially significant impacts. **Was anything else meant by the mention of this section, or is the extent of the guidance followed?**

RO-2-25

Second, CEQA Guidelines Section 15064.4 addresses *analysis* of greenhouse gas (GHG) emissions only. It does not prescribe mitigations, and the controversy in the CAP to date<sup>5</sup> has involved whether the proposed mitigation, specifically the use of carbon offsets is appropriate or

<sup>5</sup> Per Golden Door Properties LLC vs County of San Diego, 37-2018-00013324-CU-TT-CTL, issued 12/24/2018.

RO-2-25 Continued	<p>even possible. <b>Is this interpretation correct? What guidelines for appropriate mitigation were followed in creating this SEIR?</b> Please clarify.</p> <p>Third, 15064.4 specifies that “[t]he agency’s analysis should consider a timeframe that is appropriate for the project.” In this case, the timeframe that is most appropriate seems to be that given by Executive Order B-55-18, which states that “a new statewide goal is established to achieve carbon neutrality as soon as possible, and no later than 2045, and to achieve and maintain net negative carbon emissions thereafter. This goal is in addition to the existing statewide targets of reducing greenhouse gas emissions. <b>Where is the plan to achieve carbon neutrality in less than the 26 years before 2045 and to maintain net negative carbon emissions thereafter? This seems to be a more pressing deadline than the one analyzed, of offsetting operations emissions for the 30 years after construction is over (which, if the Project is completed in 2029, would be in 2059. Is this timeline correct?).</b></p>
RO-2-26	<p>Fourth, we are unclear about how two of the mitigations would work in practice. On p. 2.10-31, the SEIR states, “prior to the County’s issuance of the Project’s first grading permit, the Project applicant (or its designee) shall provide evidence to the satisfaction of Planning &amp; Development Services that the Project applicant (or its designee) has...” Our questions here are general, not aimed at this specific mitigation.</p>
RO-2-27	<p>a) <b>What happens if no one provides evidence? What happens if no one provides satisfactory evidence?</b></p>
RO-2-28	<p>b) <b>What constitutes satisfactory evidence? If there is a standard, why was that standard not included?</b></p>
RO-2-29	<p>c) <b>Who decides whether the evidence is satisfactory? Is it any employee of PDS, or are there specific standards for who may decide, and if the latter, what are those standards?</b></p>
RO-2-30	<p>d) <b>Who gets to know whether satisfactory evidence has been provided? Does only the Head of PDS know? The Supervisors? The public? Will it be recorded anywhere? Or is this a case where someone can walk up to a PDS receptionist, get a signature on an impressive-looking sheaf of papers, and walk away having fulfilled this mitigation, even if most of the papers in the sheaf are blank and no record is made of what was signed?</b></p>
RO-2-31	<p>Fifth, it is unclear how the proposed mitigation, especially mitigations M-GCC-7 and M-GCC-8, meet the goals of the County General Plan. In this case, the specific reference is to Goal COS-20 (General Plan p. 5-38, <b><i>bolding added for emphasis only</i></b>): “GOAL COS-20. Governance and Administration. <b><i>Reduction of community-wide (i.e., unincorporated County) and County Operations greenhouse gas emissions contributing to climate change that meet or exceed requirements of the Global Warming Solutions Act of 2006, as amended by Senate Bill 32</i></b> (as amended, Pavley. California Global Warming Solutions Act of 2006: emissions limit). It appears that the General Plan intends for “reduction of county-wide greenhouse gas emissions.”</p> <p>Carbon offsets are not emissions reductions, by definition. They allow Project emissions to occur within the County, then seek to undo the impact caused somewhere off the Project site. It should also be noted that opportunities for carbon offsets are also limited. After all, if Earth had unlimited capacity for offsetting human greenhouse gas emissions, we would not be facing a climate crisis right now. Therefore, it is clear the intent of the General Plan Goal COS-20 is to reduce emissions in unincorporated San Diego County to at a minimum to meet SB-32. If we</p>

include Executive Order BB-18-55, then it is clear that the County should be on the path to having no emissions and net negative carbon emissions with all rational haste.

To this end, **why were mitigations M-GCC-7 and M-GCC-8 included? How do they meet Goal COS-20 of the General Plan? Even assuming these mitigations are valid attempts to meet the goals of the General Plan, what is the evidence that they are possible, that there is a supply of carbon offsets not only readily available for the Project, but that will continue to be available until roughly 2060?**

Thank you for taking these comments. Please keep CNPSSD informed of all developments with this project and associated documents and meetings, at [conservation@cnpsd.org](mailto:conservation@cnpsd.org) and [franklandis03@yahoo.com](mailto:franklandis03@yahoo.com).

Sincerely,

A handwritten signature in blue ink that reads "Frank Landis". The signature is written in a cursive, flowing style.

Frank Landis, PhD

Conservation Chair

California Native Plant Society, San Diego Chapter